Supreme Court, U.S.
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DEC 19 1979
MICHAEL RODAK, JR., CLERK

No. 79-5555

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

ALBERT IRVIN CATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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MEMORANDUM FOR THE UNITED STATES

Petitioner contends (Pet. 2-4) that the district court erred in imposing a special parole term as part of his sentence for conspiracy to violate federal drug importation laws.

Upon his plea of guilty, petitioner was convicted on one count of conspiring to import marijuana, in violation of 21 U.S.C. 963. He was sentenced to two years' imprisonment, to be followed by a three year term of special parole. The court of appeals affirmed per curiam (Pet. App. A), relying on United States v. Dankert, 507 F.2d 190 (5th Cir. 1975).

The question presented in this case is the same as that presented in Bifulco v. United States, cert. granted, No. 79-5010 (Oct. 9, 1979).[1] In that case, which involved interpretation of

1/ We are sending petitioner a copy of our response to the petition in Bifulco.

a companion conspiracy statute, 21 U.S.C. 846, the court of appeals held that it is proper to impose a special parole term for a drug distribution conspiracy whenever such a term is required for the underlying substantive offense. Bifulco v. United States, 600 F.2d 407, 409-410 (2d Cir. 1979). With one exception,[2] every court of appeals that has considered this question has reached the same conclusion. See United States v. Sellers, 603 F.2d 53 (8th Cir. 1979), petition for cert. pending, No. 79-5485; Cantu v. United States, 598 F.2d 471, 472 (5th Cir. 1979); United States v. Burman, 584 F.2d 1354, 1357-1358 (4th Cir. 1978), cert. denied, 439 U.S. 1113 (1979); United States v. Jacobson, 578 F.2d 863, 867-868 (10th Cir.), cert. denied, 439 U.S. 932 (1978). We believe the majority is correct and that the reasoning of these decisions applies to drug importation conspiracies in violation of Section 963. See United States v. Dankert, supra.

We suggest that the Court defer consideration of this petition until Bifulco is decided and dispose of this case in light of Bifulco.[3]

Respectfully submitted.

WADE H. McCREE, JR.
Solicitor General

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2/ United States v. Mearns, 599 F.2d 1296 (3d Cir. 1979), petition for cert. pending, No. 79-415.

3/ There is no merit to petitioner's related claim (Pet. 4) that a special parole term is not mandatory. If Section 963 incorporates the special parole provisions of Section 960(b), it is clear from the language of the latter section that a special parole term is mandatory if the sentence includes a term of imprisonment.